



Higher Education & Workforce Subcommittee

Wednesday, January 8, 2014
12:30 p.m. – 2:30 p.m.
102 HOB

Meeting Packet

Will Weatherford
Speaker

Jeanette Nuñez
Chair



AGENDA

Higher Education & Workforce Subcommittee
Wednesday, January 8, 2014
12:30 p.m. – 2:30 p.m.
102 HOB

- I. Call to Order/Roll Call
- II. Opening Remarks
- III. Consideration of the following bills:
 - HB 115 Public Meetings/University Direct Support Organization by Pigman
 - HB 135 Public Records & Public Meetings/Postsecondary Education Executive Search by Kerner
 - HB 137 Edison State College by Hudson
- IV. Presentation by OPPAGA on Technical Centers
 - Mark Baird, Senior Legislative Analyst
- V. Closing Remarks and Adjournment

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Higher Education & Workforce Subcommittee

Start Date and Time: Wednesday, January 08, 2014 12:30 pm
End Date and Time: Wednesday, January 08, 2014 02:30 pm
Location: Reed Hall (102 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 115 Public Meetings/University Direct Support Organization by Pigman
HB 135 Public Records & Public Meetings/Postsecondary Education Executive Search by Kerner
HB 137 Edison State College by Hudson

Presentation by OPPAGA on Technical Centers



Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by a member who is not a member of the subcommittee shall be 6:00 pm, Tuesday, January 07, 2014.

By request of the Chair, all subcommittee members are asked to have amendments to bills on the agenda submitted by 6:00 pm, Tuesday, January 07, 2014.

NOTICE FINALIZED on 12/20/2013 12:39 by Flynn.Kaley

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 115 Public Meetings/University Direct Support Organization
SPONSOR(S): Pigman
TIED BILLS: IDEN./SIM. BILLS: SB 318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee		Ammel 	Sherry 
2) Government Operations Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

Current law provides that certain university direct-support organization (DSO) documents are public records, while all other documents are confidential and exempt from public records laws. However, there is no comparable public meetings exemption for university DSO board meetings at which confidential documents are discussed.

The bill creates a public meetings exemption for any portion of a meeting of the board of directors of the DSO or of a committee of the DSO in which the board or committee discusses the identity of a donor or prospective donor, proposal seeking research funding from the DSO, or a plan or program for either initiating or supporting research.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

There is no anticipated fiscal impact associated with the bill.

The bill provides for an effective date of October 1, 2014.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public records or public meetings exemption. The bill creates a public meetings exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

State Constitution: Open Meetings

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Article I, s. 24(c) of the State Constitution authorizes the Legislature to provide exemptions from the open meeting requirements upon a two-thirds vote of both legislative chambers, in a bill that specifies the public necessity giving rise to the exemption.

Government in the Sunshine Law

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.¹ The board or commission must provide reasonable notice of all public meetings.² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.³ Minutes of a public meeting must be promptly recorded and be open to public inspection.⁴

The Open Government Sunset Review Act⁵ provides that a public meeting exemption may be created or maintained only if it serves an identifiable public purpose and the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁶ However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.⁷

University Direct-Support Organizations

Current law defines "university direct-support organization" (DSO) to mean an organization that is:

- A Florida corporation not for profit incorporated under the provisions of chapter 617, F.S., and approved by the Department of State.

¹ Section 286.011(1), F.S.

² *Ibid.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ Section 119.15, F.S.

⁶ *Ibid.*

⁷ *Ibid.*

- Organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university in Florida or for the benefit of a research and development park or research and development authority affiliated with a state university and organized under part V of chapter 159, F.S.
- An organization that a state university board of trustees, after review, has certified to be operating in a manner consistent with the goals of the university and in the best interest of the state. Any organization that is denied certification by the board of trustees shall not use the name of the university that it serves.⁸

The DSO serves a role in raising private support for university academic, research, and athletic activities.⁹ The DSO may establish accounts with the State Board of Administration for investment of funds pursuant to part IV of chapter 218, F.S.¹⁰ The DSO is prohibited from giving any gift to a political committee or committee of continuous existence for any purpose other than those certified by a majority roll call vote of the governing board of the DSO at a regularly scheduled meeting as being directly related to the educational mission of the university.¹¹

DSOs are subject to public records and public meetings laws.¹² Current law provides that the following records are confidential and exempt¹³ from public records requirements:

- The identity of donors who desire to remain anonymous; and
- All records of the DSO other than the auditor's report,¹⁴ management letter, and any supplemental data required by the Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability.¹⁵

However, there is no similar exemption for DSO board meetings during which confidential and exempt records are discussed.

Effect of Proposed Changes

This bill creates a public meetings exemption for meetings of the university DSO. Specifically, the bill provides that any portion of a meeting of the board of directors for the DSO, or of the executive committee or other committee of such board, where the identify of a donor or prospective donor, any proposal seeking research funding from the organization, or a plan or program for either initiating or supporting research is discussed, is exempt from the public meetings requirements in s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

⁸ Section 1004.28(1)(a), F.S.

⁹ State University System Board of Governors, *2013 Legislative Bill Analysis for HB 359* (Feb. 14, 2013) (on file with the Higher Education and Workforce Subcommittee).

¹⁰ Section 1004.28(2)(a), F.S.

¹¹ Section 1004.28(4), F.S.

¹² See *Palm Beach Community College Foundation, Inc. v. WFTF, Inc.*, 611 So.2d 588 (Fla. 4th DCA 1993). The Florida Attorney General opined that community college direct-support organizations are subject to Sunshine Law. Op. Att'y Gen. Fla. 05-27 (2005). See also Op. Att'y Gen. Fla. 92-53 (1992) (providing that John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions by raising funds for the museum, is subject to Sunshine Law by virtue of its substantial ties with the museum).

¹³ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

¹⁴ Current law requires a DSO to provide for an annual financial audit of its accounts and records conducted by an independent certified public accountant in accordance with certain requirements. The annual audit report must be submitted to the Auditor General and the Board of Governors for review.

¹⁵ Section 1004.28(5), F.S.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity, which in part provides that the meetings included in the exemption frequently demand great sensitivity and discretion, as donors frequently seek anonymity and express concerns over the release of sensitive financial information.

The bill provides an effective date of October 1, 2014.

B. SECTION DIRECTORY:

Section 1. Amends s. 1004.28, F.S., providing an exemption from public meetings requirements for a meeting or portion of a meeting of the board of directors of a university direct-support organization or of the executive committee or other committees of the board; providing for review and repeal of the exemption.

Section 2. Provides a statement of public necessity.

Section 3. Provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meetings exemption. The bill creates a public meetings exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meetings exemption. The bill creates a public meetings exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's public necessity statement provides that DSOs serve a vital role in raising charitable donations from private sources, an undertaking that often demands great sensitivity and discretion. Since DSOs must evaluate proposals that contain highly proprietary information, the documents are protected as confidential by current law. However, failure to close meetings in which exempt or confidential records are reported or discussed significantly compromises their confidentiality. The bill limits the public meetings exemption to only the portion of the meeting in which the university DSO discusses the identity of a donor or prospective donor, proposal seeking research funding from the DSO, or a plan or program for either initiating or supporting research.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 115

2014

1 A bill to be entitled
 2 An act relating to public meetings; amending s.
 3 1004.28, F.S.; providing an exemption from public
 4 meeting requirements for any portion of a meeting of
 5 the board of directors of a university direct-support
 6 organization, or of the executive committee or other
 7 committees of such board, at which the identity of a
 8 donor or prospective donor, any proposal seeking
 9 research funding from the organization, or a plan or
 10 program for either initiating or supporting research is
 11 discussed; providing for review and repeal of the
 12 exemption; providing a statement of public necessity;
 13 providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Subsection (5) of section 1004.28, Florida
 18 Statutes, is amended to read:

19 1004.28 Direct-support organizations; use of property;
 20 board of directors; activities; audit; facilities.—

21 (5) ANNUAL AUDIT; PUBLIC RECORDS EXEMPTION; PUBLIC
 22 MEETINGS EXEMPTION.—

23 (a) Each direct-support organization shall provide for an
 24 annual financial audit of its accounts and records to be
 25 conducted by an independent certified public accountant in
 26 accordance with rules adopted by the Auditor General pursuant to
 27 s. 11.45(8) and by the university board of trustees. The annual
 28 audit report shall be submitted, within 9 months after the end

29 of the fiscal year, to the Auditor General and the Board of
 30 Governors for review. The Board of Governors, the university
 31 board of trustees, the Auditor General, and the Office of
 32 Program Policy Analysis and Government Accountability shall have
 33 the authority to require and receive from the organization or
 34 from its independent auditor any records relative to the
 35 operation of the organization. The identity of donors who desire
 36 to remain anonymous shall be protected, and that anonymity shall
 37 be maintained in the auditor's report.

38 (b) All records of the organization other than the
 39 auditor's report, management letter, and any supplemental data
 40 requested by the Board of Governors, the university board of
 41 trustees, the Auditor General, and the Office of Program Policy
 42 Analysis and Government Accountability shall be confidential and
 43 exempt from ~~the provisions of~~ s. 119.07(1).

44 (c) Any portion of a meeting of the board of directors of
 45 the organization, or of the executive committee or other
 46 committees of such board, at which the identity of a donor or
 47 prospective donor, any proposal seeking research funding from the
 48 organization, or a plan or program for either initiating or
 49 supporting research is discussed is exempt from s. 286.011 and s.
 50 24(b), Art. I of the State Constitution. This paragraph is subject
 51 to the Open Government Sunset Review Act in accordance with s.
 52 119.15 and shall stand repealed on October 2, 2019, unless
 53 reviewed and saved from repeal through reenactment by the
 54 Legislature.

55 Section 2. The Legislature finds that it is a public
 56 necessity that meetings of the board of directors of a direct-



57 support organization established under s. 1004.28, Florida
 58 Statutes, or of the executive committee or other committees of
 59 such board, at which the identity of a donor or prospective
 60 donor, any proposal seeking research funding from the
 61 organization, or a plan or program for either initiating or
 62 supporting research is discussed should be held exempt from s.
 63 286.011, Florida Statutes, and s. 24(b), Article I of the State
 64 Constitution. For the benefit of our state universities, and
 65 ultimately all the people of Florida, direct-support
 66 organizations serve a vital role in raising donations from
 67 private sources. This undertaking demands great sensitivity and
 68 discretion, as donors frequently seek anonymity and are concerned
 69 about the potential release of sensitive financial information.
 70 If direct-support organizations cannot honor those requests and
 71 protect such information from public disclosure, potential
 72 donors may decline to contribute, thus hampering the ability of
 73 the direct-support organization to carry out its activities. The
 74 state has recognized these realities by making most of the
 75 records of direct-support organizations confidential and exempt
 76 from the state's public records requirements, including the
 77 identity of donors and prospective donors. However, without the
 78 exemption from public meeting requirements, release of the
 79 identity of donors or prospective donors via a public meeting
 80 would defeat the purpose of the public records exemption. It is
 81 therefore the finding of the Legislature that the exemption from
 82 public meeting requirements is a public necessity. Additionally,
 83 the resources raised by direct-support organizations are
 84 frequently used to initiate, develop, and fund plans and

85 programs for research that routinely contain sensitive
 86 proprietary information, including university-connected research
 87 projects, which provide valuable opportunities for faculty and
 88 students and may lead to future commercial applications. This
 89 activity requires the direct-support organization to develop
 90 research strategies and evaluate proposals for research grants
 91 that routinely contain sensitive or proprietary information,
 92 including specific research approaches and targets of
 93 investigation, the disclosure of which could injure those
 94 conducting the research. Maintaining the confidentiality of
 95 research strategies, plans, and proposals is a hallmark of a
 96 responsible funding process, is practiced by the National Science
 97 Foundation and the National Institutes of Health, and allows for
 98 candid exchanges among reviewers. The state has recognized these
 99 realities by expressly making most of the records of direct-
 100 support organizations confidential and exempt from the state's
 101 public records requirements, including proposals seeking
 102 research funding. Failure to close meetings in which these
 103 activities are discussed would significantly undermine the
 104 confidentiality of the strategies, plans, and proposals
 105 themselves. Without the exemption from public meeting
 106 requirements, the release during a public meeting of a proposal
 107 seeking research funding from the direct-support organization or
 108 a plan or program for either initiating or supporting research
 109 would defeat the purpose of the public records exemption. It is
 110 therefore the finding of the Legislature that the exemption from
 111 public meeting requirements is a public necessity.

112 Section 3. This act shall take effect October 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 135 Public Records & Public Meetings/Postsecondary Education Executive Search
SPONSOR(S): Kerner
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee		Ammel 	Sherry 
2) Government Operations Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

The bill creates an exemption from public record and public meeting requirements for information associated with the applicant recruitment process and discussions associated with the applicant search for certain state university and Florida College System (FCS) institution employees. Specifically, the bill provides that any personal identifying information of an applicant for president, provost, or dean of any state university or FCS institution is confidential and exempt from public record requirements. It also creates a public meeting exemption for any meeting held for the purpose of identifying or vetting applicants for president, provost, or dean of any state university or FCS institution.

The bill provides instances when the public meeting exemption does not apply. In addition, it provides that the names of any applicants who comprise a final group of applicants must be released by the state university or FCS institution no later than 21 days before the date of the meeting at which final action or vote is to be taken on the employment of the applicants. All documents containing personal identifying information of any applicants who comprise a final group of applicants become subject to public record requirements when the applicants' names are released.

The bill provides for repeal of the section on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of October 1, 2014.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record and public meeting exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Meetings Law

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.¹ The board or commission must provide reasonable notice of all public meetings.² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.³ Minutes of a public meeting must be promptly recorded and open to public inspection.⁴

Public Record and Public Meeting Exemptions

The Legislature, however, may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.⁵

Furthermore, the Open Government Sunset Review Act⁶ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or

¹ Section 286.011(1), F.S.

² *Ibid.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ Art. I, s. 24(c), Fla. Const.

⁶ Section 119.15, F.S.

- Protects trade or business secrets.

Search Committees

Oftentimes, when looking to fill a vacant president, provost, or dean position, state universities and Florida College System (FCS) institutions⁷ establish a search committee, which may be comprised of members from an institution's board of trustees, faculty or student representatives, members of the community, a member from the Board of Governors or State Board of Education, and other potentially interested persons. The purpose of the committee is to locate qualified applicants who are interested in filling the vacant position at the university or institution, vetting applicants, and selecting a candidate to fill the position.⁸

The search committee often retains the services of a consulting firm for the purpose of conducting the search for a president or provost. It is typical for the consultant to make the initial contact with a potential applicant to determine if the person is interested in applying to fill the vacancy at the state university or FCS institution.

Information obtained by a search committee or consultant, including applications and other information gathered by a committee or consultant regarding applicants, must be made available for copying and inspection upon request. In addition, any meetings associated with the search process, including vetting of applicants, are open to the public.⁹

Effect of Proposed Changes

The bill creates an exemption from public record requirements for information associated with the applicant recruitment process and an exemption from public meeting requirements for discussions associated with the applicant search.

Specifically, the bill provides that any personal identifying information of an applicant for president, provost, or dean of any state university or FCS institution is confidential and exempt¹⁰ from public record requirements.

The bill also creates a public meeting exemption for any meeting held for the purpose of identifying or vetting applicants for president, provost, or dean of any state university or FCS institution. It provides that the public meeting exemption does not apply to a meeting held for the purpose of establishing qualifications of potential applicants or any compensation framework to be offered to potential applicants; however, any portion of such meeting that would disclose personal identifying information of an applicant or potential applicant is exempt from public meeting requirements.

Any meeting or interview held after a final group of applicants has been established and held for the purpose of making a final selection to fill the position of president, provost, or dean is subject to public meeting requirements. In addition, the names of any applicants who comprise a final group of

⁷ The Board of trustees for a FCS institution is charged with appointing an institution president and may appoint a search committee for this purpose. Section 1001.64(19), F.S.

⁸ The Board of Governors must confirm the selected candidate for president of a state university Section 1001.706(6)(a), F.S.

⁹ FCS institutions and state universities are considered state agencies, subject to public records and public meetings laws. See *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983) (holding that a University of Florida screening committee was subject to Florida's Sunshine Law); *Rhea v. District Bd. Of Trustees of Santa Fe College*, 2013 WL 950544 at 3, n. 1 (Fla. 1st DCA 2013) (noting that Santa Fe College, as part of the Florida College System, is a state agency having a duty to provide access to public records).

¹⁰ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

applicants must be released by the state university or FCS institution no later than 21 days before the date of the meeting at which final action or vote is to be taken on the employment of the applicants. All documents containing personal identifying information of any applicants who comprise a final group of applicants become subject to public record requirements when the applicants' names are released.

The bill provides that the section is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 creates s. 1004.097, F.S., to provide public record and public meeting exemptions associated with a search conducted by a state university or FCS institution for the purpose of identifying or vetting applicants for president, provost, or dean.

Section 2 provides a statement of public necessity as required by the State Constitution.

Section 3 provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on state universities and FCS institutions, because staff responsible for complying with public record requests could require training related to creation of the public record exemption. In addition, state universities and FCS institutions could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the universities and institutions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for any personal identifying information of an applicant for president, provost, or dean of any state university or FCS institution, in addition to a public meeting exemption for any meetings wherein such information is discussed or such applicants are vetted. The exemptions do not appear to be in conflict with the constitutional requirement that the exemptions be no broader than necessary to accomplish the stated purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A bill to be entitled
 An act relating to public records and public meetings;
 creating s. 1004.097, F.S.; providing an exemption
 from public records requirements for any personal
 identifying information of an applicant for president,
 provost, or dean of a state university or Florida
 College System institution; providing an exemption
 from public meeting requirements for any meeting held
 for the purpose of identifying or vetting applicants
 for president, provost, or dean of a state university
 or Florida College System institution and for any
 portion of a meeting held for the purpose of
 establishing qualifications of, or any compensation
 framework to be offered to, such potential applicants
 that would disclose personal identifying information
 of an applicant or potential applicant; providing for
 applicability; requiring release of the names of
 specified applicants within a certain timeframe;
 providing for future legislative review and repeal of
 the exemptions; providing a statement of public
 necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1004.097, Florida Statutes, is created
 to read:

1004.097 Information identifying applicants for president,
 provost, or dean at state universities and Florida College

29 System institutions; public records exemption; public meeting
 30 exemption.

31 (1) Any personal identifying information of an applicant
 32 for president, provost, or dean of a state university or Florida
 33 College System institution is confidential and exempt from s.
 34 119.07(1) and s. 24(a), Art. I of the State Constitution.

35 (2) Any meeting held for the purpose of identifying or
 36 vetting applicants for president, provost, or dean of a state
 37 university or Florida College System institution is exempt from
 38 s. 286.011 and s. 24(b), Art. I of the State Constitution. This
 39 exemption does not apply to a meeting held for the purpose of
 40 establishing qualifications of potential applicants or any
 41 compensation framework to be offered to potential applicants.
 42 However, any portion of such a meeting that would disclose
 43 personal identifying information of an applicant or potential
 44 applicant is exempt from s. 286.011 and s. 24(b), Art. I of the
 45 State Constitution.

46 (3) Any meeting or interview held after a final group of
 47 applicants has been established and held for the purpose of
 48 making a final selection to fill the position of president,
 49 provost, or dean of a state university or Florida College System
 50 institution is subject to the provisions of s. 286.011 and s.
 51 24(b), Art. I of the State Constitution.

52 (4) The names of applicants who comprise a final group of
 53 applicants pursuant to subsection (3) must be released by the
 54 state university or Florida College System institution no later
 55 than 21 days before the date of the meeting at which final

56 action or vote is to be taken on the employment of the
 57 applicants.

58 (5) Any personal identifying information of applicants who
 59 comprise a final group of applicants pursuant to subsection (3)
 60 become subject to the provisions of s. 119.07(1) and s. 24(a),
 61 Art. I of the State Constitution at the time the names of such
 62 applicants are released pursuant to subsection (4).

63 (6) This section is subject to the Open Government Sunset
 64 Review Act in accordance with s. 119.15 and shall stand repealed
 65 on October 2, 2019, unless reviewed and saved from repeal
 66 through reenactment by the Legislature.

67 Section 2. The Legislature finds that it is a public
 68 necessity that any personal identifying information of an
 69 applicant for president, provost, or dean of a state university
 70 or Florida College System institution be made confidential and
 71 exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I
 72 of the State Constitution. It is also the finding of the
 73 Legislature that any meeting held for the purpose of identifying
 74 or vetting applicants for president, provost, or dean of a state
 75 university or Florida College System institution and any portion
 76 of a meeting held for the purpose of establishing qualifications
 77 of, or any compensation framework to be offered to, such
 78 potential applicants that would disclose personal identifying
 79 information of an applicant or potential applicant be made
 80 exempt from s. 286.011, Florida Statutes, and s. 24(b), Art. I
 81 of the State Constitution. The task of filling the position of
 82 president, provost, or dean within a state university or Florida
 83 College System institution is often conducted by an executive

84 search committee. Many, if not most, applicants for such a
85 position are currently employed at another job at the time they
86 apply and could jeopardize their current positions if it were to
87 become known that they were seeking employment elsewhere. These
88 exemptions from public records and public meeting requirements
89 are needed to ensure that such a search committee can avail
90 itself of the most experienced and desirable pool of qualified
91 applicants from which to fill the position of president,
92 provost, or dean of a state university or Florida College System
93 institution. If potential applicants fear the possibility of
94 losing their current jobs as a consequence of attempting to
95 progress along their chosen career path or simply seeking
96 different and more rewarding employment, failure to have these
97 safeguards in place could have a chilling effect on the number
98 and quality of applicants available to fill the position of
99 president, provost, or dean of a state university or Florida
100 College System institution.

101 Section 3. This act shall take effect October 1, 2014.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 137 (2014)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Higher Education &
2 Workforce Subcommittee
3 Representative Hudson offered the following:
4

5 **Amendment (with title amendment)**

6 Remove line 18 and insert:

7 (f) Florida SouthWestern ~~Edison~~ State College, which
8
9



10
11 -----
12 **T I T L E A M E N D M E N T**

13 Remove line 4 and insert:

14 "Florida SouthWestern State College"; providing an
15

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 137 Edison State College
SPONSOR(S): Hudson
TIED BILLS: IDEN./SIM. BILLS: SB 236

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee		Ammel 	Sherry 
2) Education Committee			

SUMMARY ANALYSIS

Current law permits an institution in the Florida College System to change its name and use the designation "college" or "state college" if the name change has been approved by the institution's district board of trustees, the institution has been authorized to grant baccalaureate degrees, and the institution has been accredited as a baccalaureate-degree-granting institution by the Commission on Colleges of the Southern Association of Colleges and Schools. A district board of trustees that approves such a name change must seek statutory codification of the name change during the next regular legislative session. Edison College was renamed Edison State College in the 2009 legislative session, Chapter 2009-228, pursuant to this authority.

The bill changes the name of "Edison State College" to "Florida South Western State College" to avoid a possible violation of trademark rights of two other "Edison" institutions in the country. The institution has met all statutory requirements for a name change.

The fiscal impact of the bill is indeterminate. (See FISCAL COMMENTS).

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

With the approval of its district board of trustees, a Florida college may change the name of the institution as listed in s. 1000.21(3), F.S., and use the designation "college" or "state college" if it has been authorized to grant baccalaureate degrees and has been accredited as a baccalaureate-degree-granting institution by the Commission on Colleges of the Southern Association of Colleges and Schools.¹ A district board of trustees that approves the use of the designation "college" or "state college" must seek statutory codification of the name change during the next regular legislative session.²

Edison State College

Edison College changed its name to Edison State College (ESC) in 2009 in accordance with the above statutory requirements.³ There are at least two other higher education institutions that use the name "Edison" as part of their name⁴, and neither is related to ESC; however there is substantial likelihood that these institutions have superior legal rights to use "Edison" in certain areas of the United States. Therefore, to the extent that ESC advertises or promotes its educational services or provides educational services through a distance learning program in other states, ESC risks violating the trademark rights of one of the other "Edison" institutions. Additionally, Thomas Edison State College owns a federal registration trademark THOMAS EDISON STATE COLLEGE that was granted prior to 2008. ESC did not adopt its current name until 2009, so it faces substantial limits in using the mark EDISON STATE COLLEGE.⁵

ESC has met the statutory requirements for a name change.⁶ specified in s. 1001.60(2)(b)1., F.S. ESC was authorized to offer baccalaureate degrees on April 19, 2005 and had the baccalaureate degrees accredited by SACS on December 10, 2007.⁷ The institution's board of trustees adopted the new name "Florida South Western State College" at the September 24, 2013, board of trustees meeting.⁸

Effect of Proposed Changes

The bill amends s. 1000.21, F.S., to change the name of "Edison State College" to "Florida South Western State College." The college has complied with the statutory requirement for its name change.

B. SECTION DIRECTORY:

Section 1: Amends s. 1000.21, F.S., renaming Edison State College as Florida South Western State College.

Section 2: Provides an effective date of July 1, 2014.

¹ Section 1001.60(2)(b)1., F.S.

² Section 1001.60(2)(c), F.S.

³ Sections 2 and 3, ch. 2009-228, L.O.F.

⁴ Edison Community College in Ohio and Thomas Edison State College in New Jersey *per* Department of Education Analysis of HB 137 (Nov. 15, 2013).

⁵ *Ibid.*

⁶ Section 1001.60(2)(b)1., F.S.

⁷ *Ibid.*

⁸ Edison State College District Board of Trustees Meeting Minutes (Sep. 24, 2013), *available at* <http://www.edison.edu/viewdoc.php?id=294383>.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

There will be costs with an institutional name change with regard to signage, publications, documentation, and other related items; however, such costs are indeterminable. The college estimates that it will cost \$300,000 to implement the name change; however, no tax payer dollars will be used.⁹

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁹ Florida Department of Education Analysis for HB 137 (Nov.15, 2013)
STORAGE NAME: h0137.HEWS.DOCX
DATE: 12/19/2013

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 137

2014

1 A bill to be entitled
 2 An act relating to Edison State College; amending s.
 3 1000.21, F.S.; renaming Edison State College as
 4 "Florida South Western State College"; providing an
 5 effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Paragraph (f) of subsection (3) of section
 10 1000.21, Florida Statutes, is amended to read:

11 1000.21 Systemwide definitions.—As used in the Florida K-
 12 20 Education Code:

13 (3) "Florida College System institution" except as
 14 otherwise specifically provided, includes all of the following
 15 public postsecondary educational institutions in the Florida
 16 College System and any branch campuses, centers, or other
 17 affiliates of the institution:

18 (f) Florida South Western ~~Edison~~ State College, which
 19 serves Charlotte, Collier, Glades, Hendry, and Lee Counties.

20 Section 2. This act shall take effect July 1, 2014.

oppaga



Technical Centers

Higher Education & Workforce Subcommittee

**Mark Baird, Senior Legislative Analyst
OPPAGA**

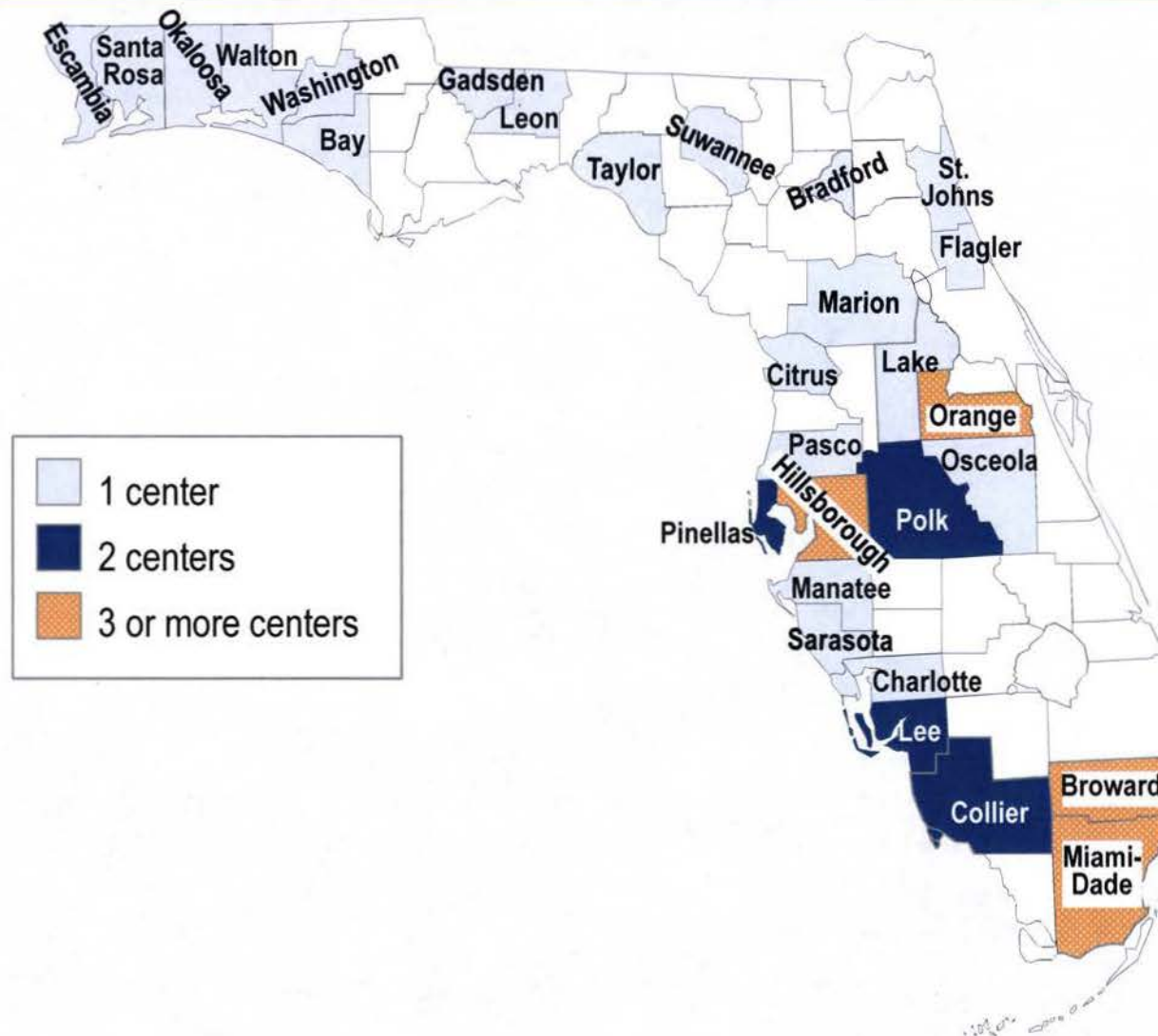
January 8, 2014

Project Scope

- What are Florida's technical centers and whom do they serve?
- How do they report data to the state?
- Which other states call their technical education institutions "colleges," and do they confer degrees?
- What might the Legislature wish to consider if it
 - ❖ Allowed technical centers to award college credit or degrees?
 - ❖ Renamed them "colleges?"

What are Technical Centers and Whom Do They Serve?

Florida Districts with Technical Centers



School Districts Administer Florida's Technical Centers

- ❖ Two technical centers are charters
 - ▶ Lake Technical Center
 - ▶ First Coast Technical College
- ❖ All accredited by the Council on Occupational Education (COE)
 - ▶ Leads to Department of Education recognition as a technical center

Technical Centers Offer Several Types of Programs

- Postsecondary Career and Technical Education (CTE)
- Adult Education
- Secondary CTE
- Career dual enrollment and early admission
- Continuing workforce education (non-state funded)

Postsecondary CTE Comprises Three Different Types of Programs

1

Career Certificate

2

Applied Technology Diploma

3

Apprenticeship

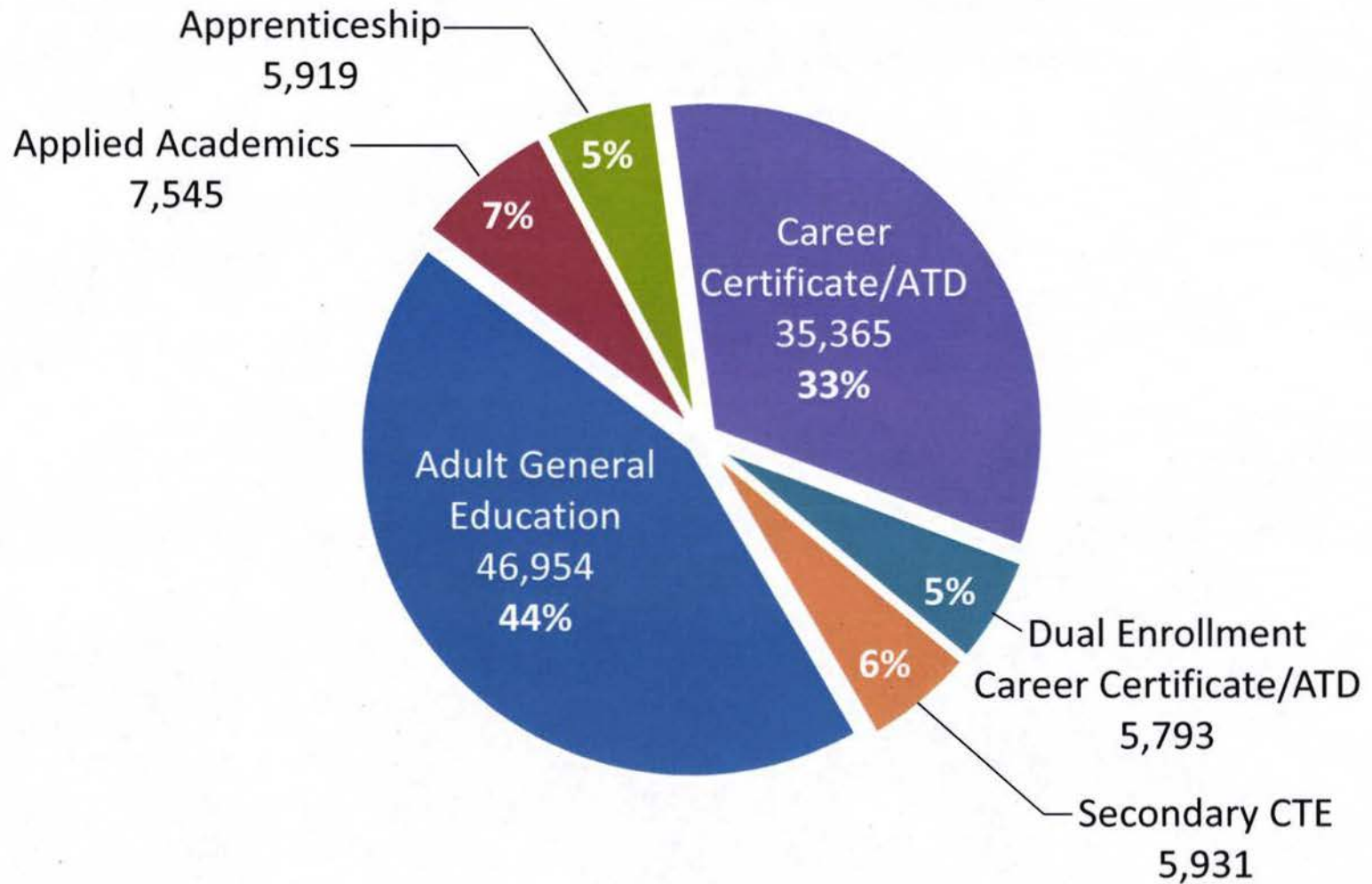
Florida's Technical Centers Offer Certificates, Not Degrees

- Technical centers
 - ❖ Offer certificate and diploma programs
 - ▶ Curriculum tied to specific occupations
 - ▶ Non-credit
 - ▶ Clock-hour
 - ▶ Competency-based
 - ❖ Do not offer college-credit courses or degree programs

High School Diploma Not Required for Certificate and Apprenticeship Programs

- Entry into Career Certificate and Apprenticeship programs does not require a high school diploma
- Technology Diploma and some Career Certificate programs articulate as college credit to Associate of Science programs
- Articulation with college credit requires students to have a high school diploma

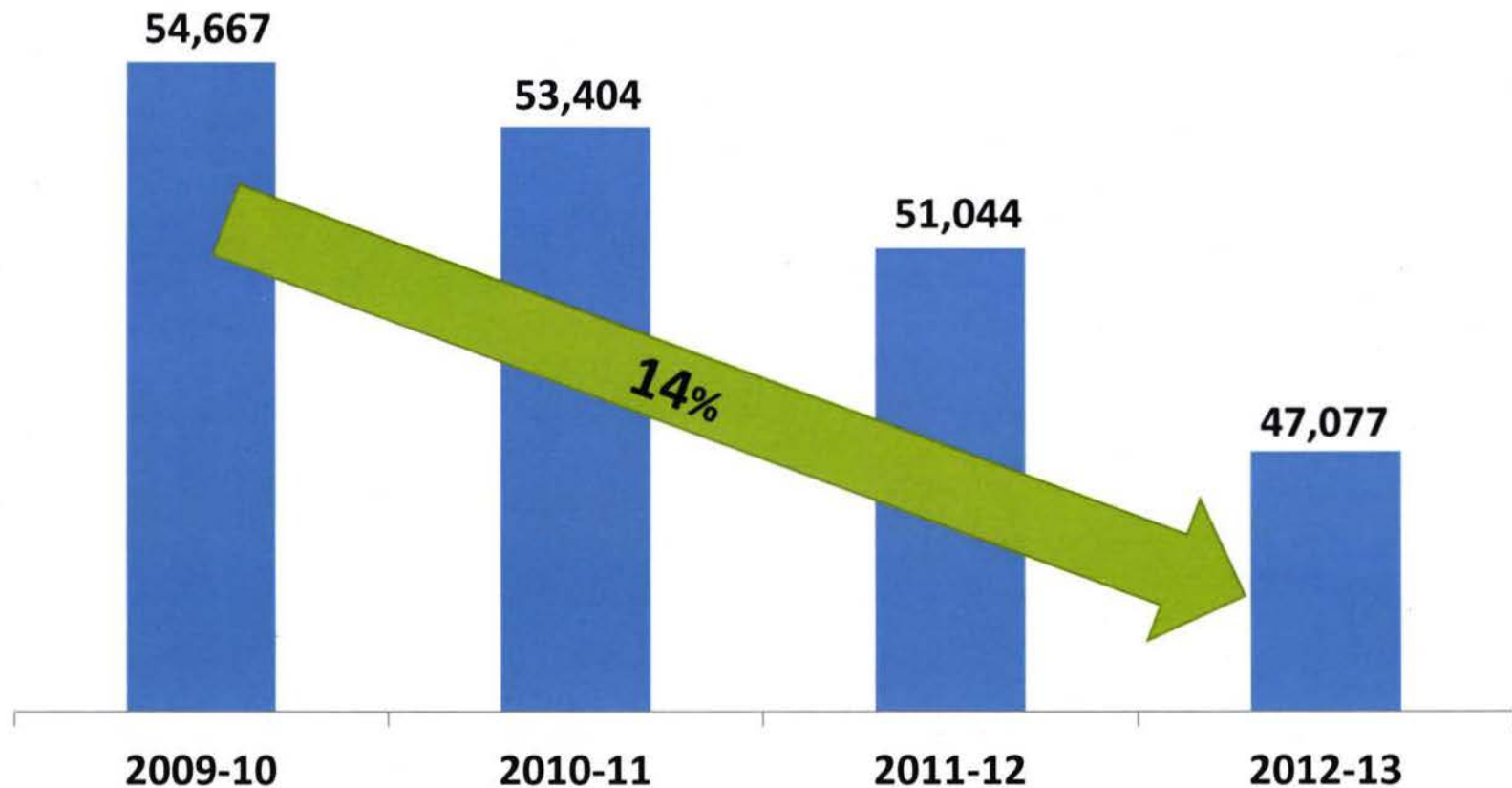
Adult General Education Represented 44% of Technical Center Enrollment in 2012-13



Top Ten Career/Technical Programs in 2012-13 by Technical Center Enrollment



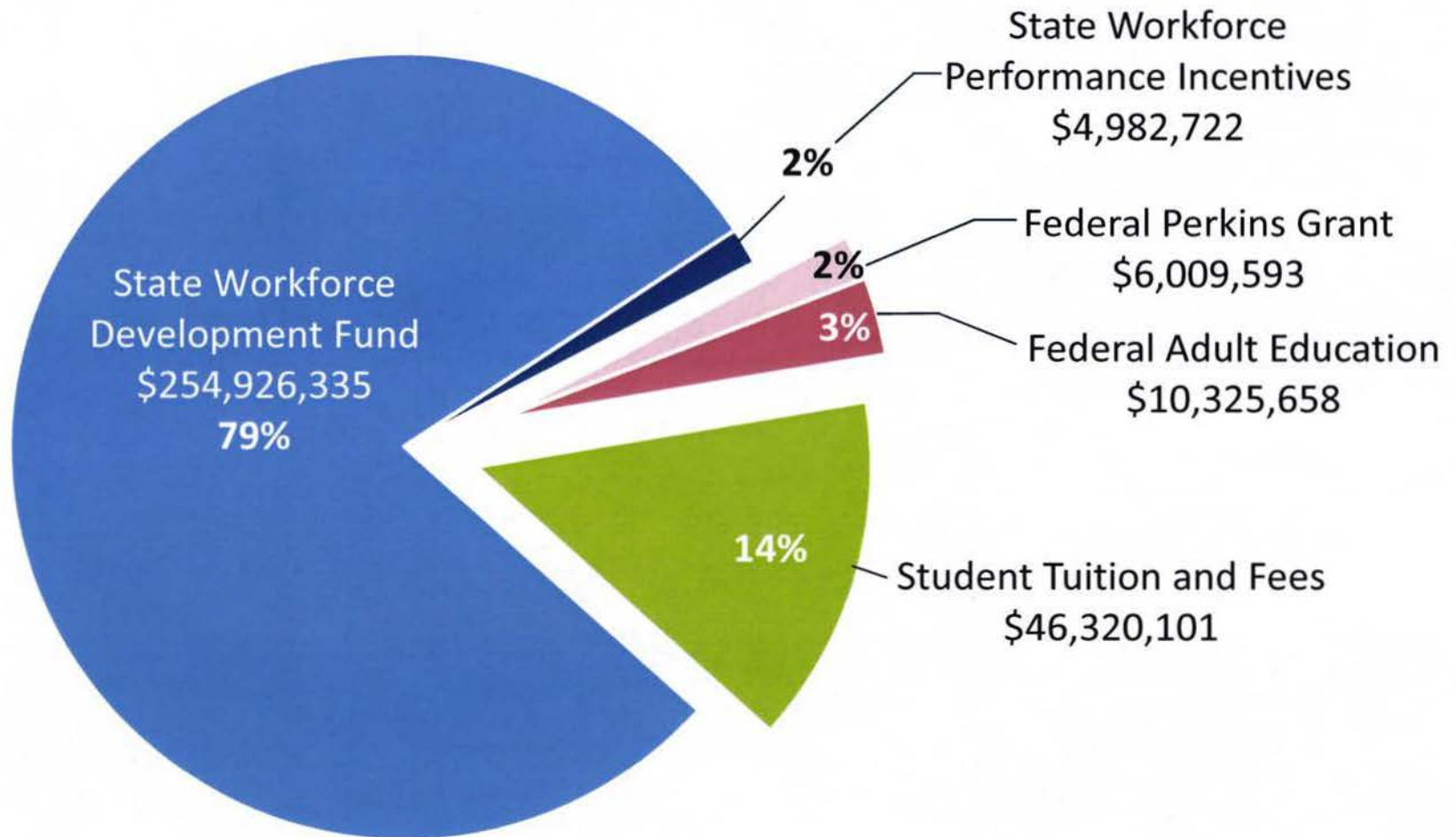
Career/Technical Program Enrollment in Technical Centers Has Dropped 14% Since 2009-10



Adult Education and Career/Technical Students Have Different Characteristics

Category	Career/Technical Education	Adult General Education
Average Age	30	31
Female	43%	55%
Black	26%	33%
Hispanic	25%	43%
White	46%	22%
Documented Disability	6%	7%

In 2012-13, State Funds Represented 81% of Technical Center Funding*

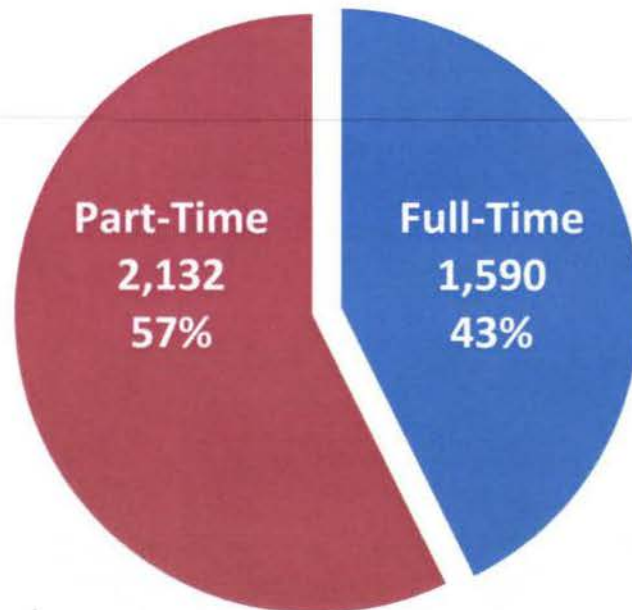


*Estimate based on proration using 2011-12 expenditure data and/or 2012-13 enrollment data.

School Districts Support Technical Center Facilities and Operations

- School districts provide personnel support such as payroll, taxes and benefits, background checks, credential review, and handling of grievances
- For over half of the centers, school districts provide all data services
 - A few of those with their own data services also rely on the district data systems for some additional functions
- Most centers rely on school district capital outlay funds (district property tax revenue, voter-approved bond issues, or voter-approved sales tax) for funding capital construction

Most Technical Center Instructional Staff are Part-Time



- Instructors must have
 - Degree in field or
 - Six years of relevant work experience (Section 1012.39, *F.S.*)

Florida Technical Centers Partner with Businesses and Civic Organizations

- Required by accreditor (COE) to maintain advisory committees for each program that include external members
- 89% of technical centers surveyed receive financial (mostly in-kind) support
- 85% receive scholarship funds
- 100% receive help placing students in jobs

Technical Centers Use a Variety of Sources to Make Decisions on Program Offerings

- Use Demand Occupations List
- Get input from program advisory committees
- Listen to local business and industry contacts
- In some cases, the center director has authority to decide on program offerings
 - In others, Superintendent or Board approval required

Data Reporting

Technical Centers Report Student-Level Data to the Department of Education

- Student-level data files are submitted to the Workforce Development Information System
 - Final enrollment data based on three survey periods—summer, fall, and spring
- Data used for
 - State and federal funding allocations
 - Performance funding
 - Accountability reports

Unique Requirements and System Variation Impose Challenges to Data Reporting

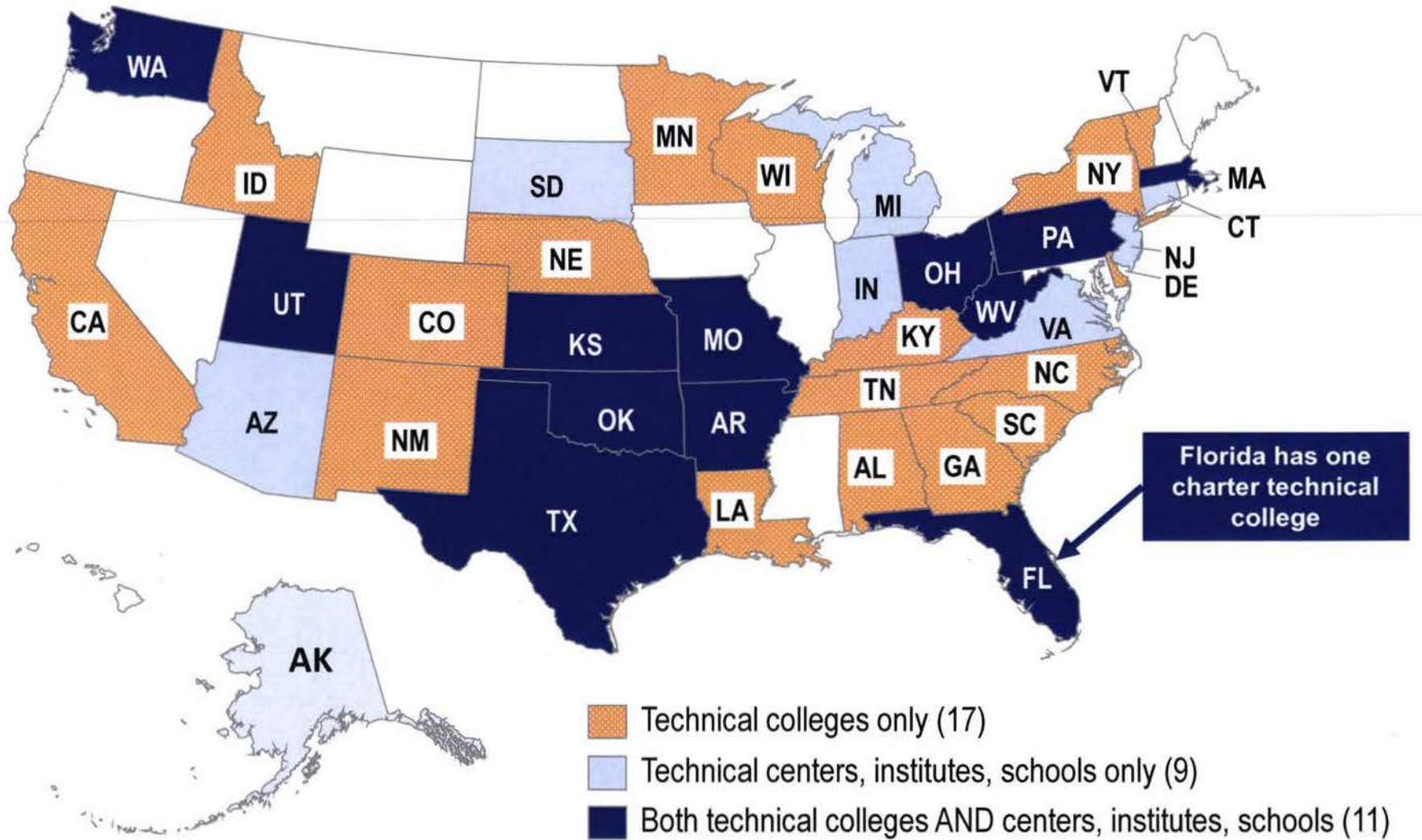
- Technical center data requirements differ from K-12
- There are many different data system arrangements across districts
 - System development
 - ▶ External vendors
 - ▶ Homegrown systems
 - ▶ Hybrids
 - Centralized versus decentralized control

Public Technical Education in Other States

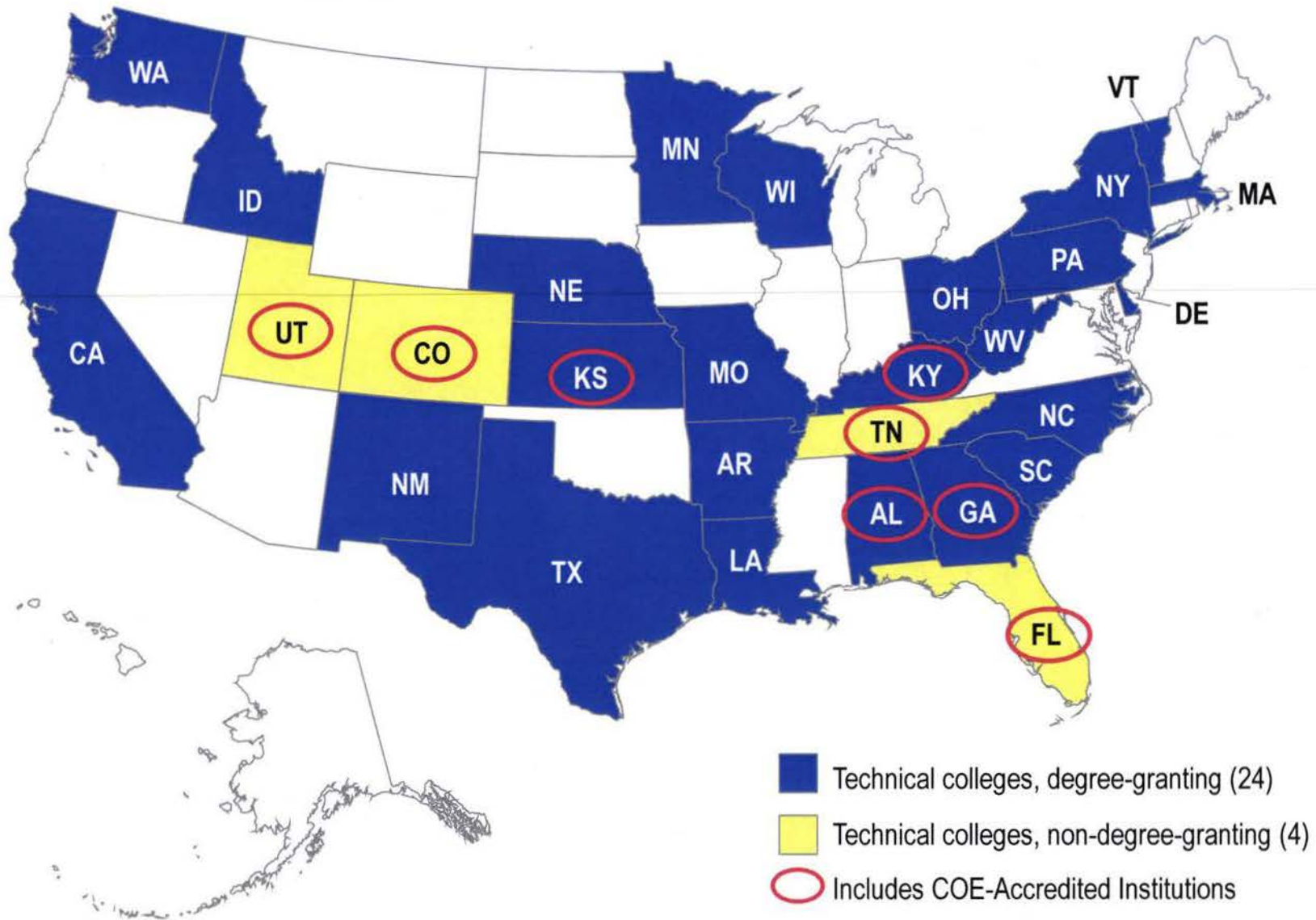
Methodology for Cross-State Comparisons

- No national inventory of public postsecondary technical institutions
- Derived from Integrated Postsecondary Education Data System, a federal database
- Criteria
 - Public institution
 - Offers occupational programs
 - Primarily awards certificates or associates degrees
 - “Technical” or “Technology” in institution’s name

37 States Have Public Sub-Baccalaureate Technical Institutions



COE Accredits Both Degree-Granting and Non-Degree-Granting Technical Colleges in 24 States Confer Degrees



- Technical colleges, degree-granting (24)
- Technical colleges, non-degree-granting (4)
- Includes COE-Accredited Institutions

Policy Considerations

Considerations if Florida Technical Centers Were Only Renamed “Colleges”

- Current COE accreditation would allow for using “college” in name
- Would require surface-level changes such as signage, websites, and catalogs
- Precedent in Tennessee and Utah

Considerations if Florida Technical Centers Awarded College Credit

- Current COE accreditation would allow for awarding college credit leading to a certificate
- Would need to convert clock-hours to credit hours
- Certificate-to-degree articulation between districts and the Florida College System would need to be addressed
- Precedent in Colorado

Considerations if Florida Technical Centers Awarded Associate of Applied Science Degrees

- Current COE accreditation would allow for awarding terminal associate of applied science degrees
- Transferability of earned credit between districts and the Florida College System would require continuing articulation efforts
- Would need to hire instructors to teach general education classes
- Precedent in Alabama, Georgia, Kansas, Kentucky, and Louisiana

Contact Information

Mark Baird

Senior Legislative Analyst

(850) 717-0527

baird.mark@oppaga.fl.gov

David Summers

Education Staff Director

(850) 717-0555

summers.david@oppaga.fl.gov

